

Internal Revenue Service

Number: **201039013**
Release Date: 10/1/2010

Index Number: 382.00-00, 382.07-00,
382.07-05, 382.12-00,
382.12-06

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

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CC:CORP:02
PLR-113764-10

Date:
June 29, 2010

LEGEND

Taxpayer =

State A =

Series 1 Preferred Stock =

Series 2 Preferred Stock =

Security A =

Group A =

Person A =

Person B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

a =

b =

c =

d =

e =

Dear :

This letter responds to your letter dated March 26, 2010 requesting rulings regarding application of section 382 of the Internal Revenue Code to Taxpayer. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Taxpayer is a publicly traded, State A corporation and is the common parent of an affiliated group whose includible corporations join in the filing of a consolidated federal income tax return. As of Date 1, Taxpayer had outstanding a single class of common stock (the "Common Stock") and multiple classes of preferred stock described in section 1504(a)(4).

On Date 2, Taxpayer completed a \$a private offering of Series 1 Preferred Stock to Group A, which included Person A and Person B, by issuing b corresponding depository shares (the “Offering”). Each share of the Series 1 Preferred Stock was convertible at any time, at the option of the holder, into shares of Common Stock at a conversion price of \$c, subject to certain adjustments. Pursuant to Treas. Reg. § 1.382-3(j)(3), Taxpayer applied the cash issuance exception to the issuance of the Series 1 Preferred Stock in the Offering. Applying the Hold Constant Principle, as defined in Notice 2010-50, 2010-27 I.R.B. ___, to identify 5-percent shareholders for purposes of section 382, all shares issued in the Offering would be treated as issued to direct public groups of Taxpayer.

On Date 2 and Date 3, Taxpayer issued Series 2 Preferred Stock by issuing depository shares to direct public groups of Taxpayer. Shares of the Series 2 Preferred Stock were convertible at any time, at the option of the holder, into shares of Common Stock at a set conversion price, subject to certain adjustments. Pursuant to Treas. Reg. § 1.382-3(j)(3), Taxpayer applied the cash issuance exception to the issuance of the Series 2 Preferred Stock.

On Date 4, under the terms of an anti-dilution adjustment mechanism in the investor agreements, the conversion price for the Series 1 Preferred Stock was reset from \$c per share to \$d per share (the “Reset”). In connection with the Reset, on Date 5, Taxpayer exchanged shares of the originally issued Series 1 Preferred Stock for an equal number of shares of New Series 1 Preferred Stock with identical terms and conditions, except for the reset conversion price. Taxpayer treated the Reset as a reorganization within the meaning of section 368(a)(1)(E) or otherwise tax-free under Treas. Reg. § 1.305-7(b)(1).

On Date 6, Taxpayer issued newly created Security A and a warrant to acquire shares of Common Stock at \$e per share in exchange for all of the shares of New Series 1 Preferred Stock held by Group A (the “Series 1 Exchange”). Security A generally had the same voting rights as the Common Stock. Taxpayer treated the Series 1 Exchange as a reorganization within the meaning of section 368(a)(1)(E).

On Date 7, Taxpayer issued shares of Common Stock in exchange for shares of Series 2 Preferred Stock and shares of certain other preferred stock that are not stock within the meaning of section 382(k)(6) (the “Series 2 Exchange”). Taxpayer treated the Series 2 Exchange as a reorganization within the meaning of section 368(a)(1)(E).

On Date 8, the holders of a majority of the shares of Common Stock outstanding consented to increase the number of authorized shares of Common Stock. As a result of this consent each warrant issued in connection with Security A held by Group A was cancelled.

On Date 9, Security A held by Group A was converted into shares of Common Stock pursuant to the terms of Security A (the "Conversion"). Taxpayer treated the Conversion as a reorganization within the meaning of section 368(a)(1)(E).

REPRESENTATIONS

The following representations have been made with respect to the equity ownership of Taxpayer:

- (a) Applying the Hold Constant Principle, as defined in Notice 2010-50, 2010-27 I.R.B. ___, Taxpayer has not had a section 382 ownership change during the period from Date 1 to the date of this letter.
- (b) The amount of Security A received in the Series 1 Exchange and the amount of the Common Stock received in the Series 2 Exchange were determined, in the case of the Series 1 Exchange, based on arm's length negotiations, and in the case of the Series 2 Exchange, based on exchange ratios derived from the Series 1 Exchange, and hence the Series 1 Exchange and the Series 2 Exchange each constituted a value-for-value exchange. The amount of New Series 1 Preferred Stock received in the Reset and the amount of Common Stock received in the Conversion, were determined based on the terms of the Series 1 Preferred Stock and Security A, respectively, and hence the Reset and the Conversion, each constituted a value-for-value exchange.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule as follows:

- (1) Shares of New Series 1 Preferred Stock issued in exchange for shares of the old Series 1 Preferred Stock in the Reset, Security A issued in exchange for shares of New Series 1 Preferred Stock in the Series 1 Exchange, shares of Common Stock issued pursuant to the conversion of Security A in the Conversion, and shares of Common Stock issued in exchange for shares of Series 2 Preferred Stock in the Series 2 Exchange, each will be allocated to Taxpayer's direct public groups in the same proportion as such groups were treated as having tendered the instruments respectively surrendered in the Reset, the Series 1 Exchange, the Conversion, and the Series 2 Exchange.
- (2) The Hold Constant Principle, as defined in, and subject to the terms and conditions of, Notice 2010-50, 2010-27 I.R.B. ___, may be applied to identify 5-percent shareholders for all purposes of section 382.

- (3) The Series 1 Preferred Stock and the Series 2 Preferred Stock are stock described in “any rule or regulation to generally the same effect” as Rule 13d-1(d) of Regulation 13D-G within the meaning of Treas. Reg. § 1.382-2T(k)(1) and, therefore, constitute “registered stock” within the meaning of such regulation. Any reliance on the existence or absence of filings of Schedules 13D or 13G to identify 5-percent shareholders pursuant to Treas. Reg. § 1.382-2T(k)(1) is subject to actual knowledge regarding stock ownership as provided in Treas. Reg. § 1.382-2T(k)(2).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed as to whether or not (i) any stock issued before, on, or after Date 1 should be treated as stock for purposes of section 382; (ii) Taxpayer had a testing date on any given date; (iii) Taxpayer had an ownership change on any testing date (under either the methodology set forth at Treas. Reg. § 1.382-2T(c)(1) or the Hold Constant Principle, as defined in Notice 2010-50, 2010-27 I.R.B. __); (iv) any warrants or options should be treated as exercised under Treas. Reg. § 1.382-4(d); or (v) any exchange of stock pursuant to a recapitalization or conversion represented a value-for-value exchange. One or more rulings given in this letter deal with issues that may be addressed in subsequent published guidance. See section 11.04 of Rev. Proc. 2010-1, 2010-1 I.R.B. 1, 49 (regarding the circumstances, including published guidance, which may result in the revocation or modification of a letter ruling).

PROCEDURAL STATEMENTS

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Douglas C. Bates
Reviewing Attorney, Branch 5
Office of Associate Chief Counsel (Corporate)